

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,	)
	)
Plaintiff/Counter-Defendant,	)
	)
v.	)
ILLUMINA, INC.,	) C.A. No. 04-901-JJF
	)
Defendant/Counter-Plaintiff.	)
	)

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**JOINT AGREED [PROPOSED] ORDER**

On December 7, 2005, the parties appeared before the Court to discuss discovery disputes raised in letters from each party dated December 2, 2005. The following is the Court's ruling on the disputes:

Illumina shall produce all documents from the files of Dr. Mark Chee on or before December 15, 2005.

Illumina shall produce a witness on Affymetrix's Second 30(b)(6) Notice before the end of 2005, unless a date is otherwise agreed by the parties.

Illumina and Affymetrix shall produce to a third party escrow service agreed by the parties the source code related to (1) the software used for decoding and (2) the software used for genotyping as soon as possible, but no later than December 23, 2005.

Illumina and Affymetrix shall produce the probe sequence information for the genotyping products in "live" format on or before January 6, 2005. The parties will agree on the appropriate "live" format.

The parties shall each produce to the other damages documents as those documents are formatted and circulated internally and in their native live version on or before January 6, 2006.

If there are barriers to producing such documents in their native format, the parties shall reach agreement prior to production on a suitable neutral live format such as a tab or comma delimited file.

The parties may also request further information be made available from the accounting database software used by each party to maintain such information. Each party shall submit to the other a request for any additional reports to be generated from existing database. Each party shall verify that such request has been reviewed with their respective damages experts prior to submission and determined to be reasonable and necessary to their damages analysis. The parties shall fulfill such requests within ten (10) business days.

Illumina's in-house counsel, Stephanie Valentini, Illumina's Chief Executive Officer, Jay Flatley, and Illumina's Chief Operating Officer, John Stuelpnagel, may review Affymetrix's Infringement Contentions. To avoid confusion about the scope of this disclosure, Affymetrix shall reproduce those documents to Illumina with a special identification thereon. The restrictions which would otherwise apply to employees entitled to see Confidential materials under the protective order will not be applied as to Ms. Valentini, Mr. Flatley's, and Mr. Stuelpnagel's review of this particular document. This exception to the protective order does not otherwise amend or modify the protective order as to those restrictions and their application to Confidential Information.

Illumina has until January 30, 2006, to announce whether it intends to waive attorney-client privilege as to any opinions regarding the patents-in-suit.

No discovery is permitted at this time with regard to products that have not been commercialized as of December 7, 2005.

Affymetrix's requests for production of documents related to (1) Illumina's past litigation with former employee, Dr. Czarnik, and (2) Illumina's past litigation with Applera are presently denied.

Illumina's requests for production of documents related to (1) Affymetrix's past litigation with OGT and (2) Affymetrix's past litigation with Incyte are presently denied.

MORRIS, NICHOLS, ARSHT & TUNNELL

*/s/ Melissa Myers*

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 Attorneys for Defendant/Counter-Plaintiff  
 Illumina, Inc.

**SO ORDERED** this \_\_\_\_\_ day of December, 2005.

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Judge Joseph J. Farnan, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2005, I electronically filed the foregoing Joint Agreed [Proposed] Order using CM/ECF which will send notification of such filing(s) to the following:

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I hereby certify that on December 19, 2005, I have caused to be sent by Federal Express, the above-mentioned document to the following non-registered participants:

Marcus E. Sernel  
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MORRIS, NICHOLS, ARSHT & TUNNELL

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December 19, 2005